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September 9, 2004

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**VIA HAND DELIVERY**

Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

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SEP 09 2004

PUBLIC SERVICE  
COMMISSION

**RE: Paddock at Eastpoint, LLC, Louis K. Klemenz, and St. Joseph Catholic Orphan Society v. Louisville Gas and Electric Company**  
**Case No. 2004-00293**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Louisville Gas and Electric Company's Response to Motion of MRH for Leave to Intervene in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copy and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

  
J. Gregory Cornett

JGC/ec  
Enclosures  
cc: Parties of Record

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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SEP 09 2004

In the Matter of:

PUBLIC SERVICE  
COMMISSION

PADDOCK AT EASTPOINT, LLC, )  
LOUIS K. KLEMENZ, AND )  
ST. JOSEPH CATHOLIC )  
ORPHAN SOCIETY )  
)  
COMPLAINANTS )  
v. )  
)  
LOUISVILLE GAS AND )  
ELECTRIC COMPANY )  
)  
DEFENDANT )

CASE NO. 2004-00293

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY TO MOTION OF  
MRH FOR LEAVE TO INTERVENE**

The Defendant, Louisville Gas and Electric Company ("LG&E"), by counsel, for its Response to the Motion for Leave to Intervene in the Proceeding by MRH Development Company ("MRH"), filed on September 2, 2004, states as follows:

1. With regard to the averments contained in numerical paragraph 1 of the Motion, LG&E, on information and belief, admits that MRH owns a parcel of property adjacent to I-265 in Louisville, Jefferson County, Kentucky.
2. LG&E admits the averments contained in numerical paragraph 2 of the Motion.
3. With regard to the averments contained in numerical paragraph 3 of the Motion, LG&E admits that it examined various alternative routes for the 138 KU transmission line being constructed along I-265 in Jefferson County, Kentucky ("Gene Snyder line"), some of which involved MRH's property and some of which did not. LG&E further states, however, that after studying all of the options, it determined that the location of the Gene Snyder line, as presently planned and being constructed along the eastern boundary of Interstate 265, was the most

appropriate alternative. LG&E representatives have discussed the alternatives and the chosen route with interested parties or those parties' representatives on multiple occasions. Specifically, representatives of LG&E met individually with all property owners affected by the new line or their representatives, participated in two public meetings in Louisville in January 2004, met on two other occasions with Louisville Metro Councilman Hal Heiner (whose district includes the MRH property) and some of his staff, worked with Councilman Heiner and his staff to study alternative routes and the possibility of installing some or all of the Gene Snyder line underground, and participated in another public meeting at the Public Service Commission in May 2004. LG&E affirmatively states that the Gene Snyder line is a vital part of its plans to continue to deliver reliable electric service to its customers in the fastest-growing portion of the Louisville metropolitan area.

LG&E also admits that it has neither applied for nor obtained a Certificate of Public Convenience and Necessity ("CPCN") for the Gene Snyder line, but denies that a CPCN is required by KRS 278.020 for the Gene Snyder line. LG&E affirmatively states that a CPCN is not required and will not be required for the Gene Snyder line.

Planning for the Gene Snyder line began in 2000 and continued through 2003. In November 2003, LG&E received approval from the Kentucky Department of Transportation ("KDOT") for the portions of the selected route along the east side of Interstate 265 that involve KDOT's right of way, and began survey work and easement acquisition for that route. In March 2004, LG&E began clearing the easement area on properties where the easements or permission to use rights of way had already been obtained, and in May 2004 construction was started on the foundations for the poles themselves. On May 25, 2004, members of the PSC Staff conducted a field review and confirmed that construction of the Gene Snyder line was underway. By July 12,

2004, LG&E had: (1) completed all engineering design work for the Gene Snyder line; (2) obtained necessary permits, as noted above, from the KDOT; (3) obtained easements and permission to use rights of way required for 5.1 of the 6.9 miles of the planned route of the Gene Snyder line; (4) commenced and/ or completed negotiations to acquire the remaining easements needed for the line; (5) begun initial preparations for any condemnation actions which might be necessary; (6) built necessary roadwork to obtain access to the sites where new poles would be placed on properties where easements or permission to use rights of way had been granted; (7) performed clearing of vegetation from the planned route of the line on properties for which easements or permissions to use rights of way had been obtained; (8) ordered all materials expected to be needed for the new line as planned, including poles and wires; and (9) completed construction of 14 of the 59 poured concrete and steel-reinforced pole footings required for the line. The footings each contain specially-ordered anchor bolts of varying lengths, depending upon the size of the pole to go on that footing, which bolts go into the footings below grade and also protrude above grade for the purpose of connecting to each pole.

MRH's claim that a CPCN is required by KRS 278.020 is apparently based on the version of that statute which was amended by the 2004 Regular Session of the General Assembly, which amendment requires, with certain exceptions, that a CPCN be obtained for the construction of a transmission line of 138 kV or more and 5,280 feet or longer in length. That amendment, however, did not take effect until July 13, 2004, well after the Gene Snyder line was under construction. Because construction on the Gene Snyder line had started before July 13, 2004, the date on which the amendment to KRS 278.020 took effect, application of that amendment to the Gene Snyder line would constitute improper retroactive application of the amended statute. See, e.g. KRS 446.080 (3) (stating that "[n]o statute shall be construed to be

retroactive, unless expressly so declared”). Here, the amended version of KRS 278.020 does not declare that it is to be applied retroactively, and therefore the amendment cannot be applied in this case.

The version of KRS 278.020 which was in effect at the time construction on the Gene Snyder line was begun, and which must be applied here, did not require LG&E to obtain a CPCN before starting construction on the line. E.g. Duerson v. East Kentucky Power Coop., Ky.App., 843 S.W.2d 340 341 (1992) (holding that pre-amendment version of KRS 278.020 did not require CPCN to be obtained before construction of a transmission line, stating that “transmission lines are extensions in the ordinary course of business and, under the statute, do not require a” CPCN).

4. LG&E denies the averments contained in numerical paragraph 4 of the Motion.

5. LG&E denies the averments contained in numerical paragraph 5 of the Motion.

For all of the reasons set forth above, the amended version of KRS 278.020 cannot lawfully be applied here and a CRCN is not required. Under the pre-amendment version of KRS 278.020, which must be applied here, MRH has no standing to seek the relief sought in this proceeding. See, e.g. Satterwhite v. Public Service Commission, Ky., 474 S.W.2d 387, 388 (1972) (affirming dismissal of action filed by landowners whose property was being condemned in connection with the construction of new generating and transmission facilities, holding that the landowners were not “parties interested within the meaning of the provision of KRS 278.020” and had no right to participate in a public hearing because the issue of the location of the facilities “was not relevant to the issue of convenience and necessity”). (Internal quotes omitted.) LG&E remains willing to again meet with MRH or others who are concerned about the Gene Snyder line to discuss their

concerns. However, a CPCN is not required and this action is not provided for under applicable law.

**FIRST AFFIRMATIVE DEFENSE**

MRH lacks standing to seek the relief requested, and this matter should be dismissed for that reason.

**SECOND AFFIRMATIVE DEFENSE**

MRH has failed to set forth a *prima facie* case that LG&E has violated KRS 278.020, as it existed at the time construction on the Gene Snyder line was started, or any other law, and this matter should be dismissed for that reason.

**THIRD AFFIRMATIVE DEFENSE**

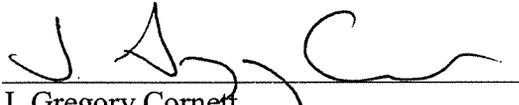
MRH has failed to set forth any claim upon which relief could be granted by this Commission, and this matter should be dismissed for that reason.

**WHEREFORE**, for all of the reasons set forth above, Louisville Gas and Electric Company respectfully requests:

- (1) that this matter be dismissed in its entirety without further action being taken by the Commission;
- (2) alternatively, that at the informal conference scheduled in this matter a procedural order be established for the purpose of setting a schedule for the filing of a motion to dismiss and any response and reply briefs thereto, and that this matter then be dismissed in its entirety;
- (3) that this matter be closed on the Commission's docket; and
- (4) that LG&E be afforded any and all other relief to which it may be entitled.

Dated: September 9, 2004

Respectfully submitted,



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COUNSEL FOR LOUISVILLE GAS  
AND ELECTRIC COMPANY

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following persons on the 9th day of September, 2004, U.S. mail, postage prepaid:

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